



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Appln. Ser. No.:	Filed:	Inventor(s):	Atty Dkt:
09/972,623	6 October 2001	R. Cheyne III	101AC-021B
Title: Surfaces with Antimicrobial Cured in Place			
Examiner: n/a		Art Unit: 3723	

Asst. Comm'r for Patents
Washington, D.C. 20231-0001

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8-5-03
Special
re
Infringement
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JUN 02 2003
TECHNOLOGY CENTER R3700

PETITION TO ADVANCE EXAMINATION UNDER § 1.102(d)

Dear Sir:

In connection with the above-identified application in which no Office Action has yet been received, Applicant, and the assignee of the entire right and interest (the assignment having been recorded at reel 013442, frame 0226 on 30 October 2002), hereby request that the examination of this application be advanced because of an existing infringement.

Fees

A check for the fee under § 1.17(h) of \$130.00 is attached hereto. If the check is missing or insufficient, or if there has been an overpayment, please debit or credit as necessary Deposit Acct. No. 502144.

Declaration of Mr. Buckler

Submitted herewith is a Declaration by Steven N. Buckler, president of the assignee of this application. The Declaration avers to Mr. Buckler's knowledge of the infringing product, including:

- (1) copies of the packaging in which the infringing product is sold;
- (2) telephoning the owner (Thomson Research Associates; "Thomson" hereinafter) of the antimicrobial treatment used in the infringing product, as stated on the product packaging; and

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(3) Mr. Buckler's conversation with Mr. Runciman at Thomson, with Mr. Runciman indicating that the sole method for making the infringing product is:

1. combining the antimicrobial agent with a binder;
2. applying the agent-binder compound to a pad; and
3. curing the compound in an oven to adhere it to the pad.

Comparison between Claims and Infringing Device

Taking the statements in the Declaration as to the representations of Mr. Runciman

Claim 1 of the instant application recites:

A non-absorbent antimicrobial surface, comprising:

- A. a substrate; and
- B. a cured polymeric coating on the substrate, said coating comprising at least one antimicrobial compound being present when said coating is cured on the substrate.

In the infringing device, the substrate is the scouring pad.

According to the packaging copy attached to the Declaration, the scouring pad includes Ultra-Fresh brand antimicrobial. According to the USPTO website, TM Reg. Nos. 1,211,136 and 1,330,317, both owned by Thomson, Ultra-Fresh is a bactericide, the "antimicrobial compound" in the claim.

According to the Declaration, Thomson's representative Mr. Runciman stated that the "sole method" for making the product is to cure the antimicrobial with the binder. According to the packaging, the treatment "protects the binding agent in these products to control odors and fungal growth within the binder." Accordingly, the infringing product has a binder.

Based on the foregoing, it is my opinion that claim 1 is unquestionably infringed: the infringing product has (A) a substrate (the scouring pad) and (B) a cured

polymeric coating (the binder) having an antimicrobial compound (Ultra-Fresh brand) present in the binder when cured (according to Mr. Runciman).

Claims 6 and 7:

A preliminary amendment is submitted herewith because the claim numbering in the application is incorrect; it can be seen that the numbering restarts with the fifth claim.

After this amendment, claims 6 and 7 (second set of claims numbered 2 and 3) recite:

6. The surface of claim 1, wherein the antimicrobial compound is a sulfone.
7. The surface of claim 6, wherein the antimicrobial compound is selected from the group consisting of diidomethyl *p*-tolyl sulfone, diiodomethyl *p*-chlorophenyl sulfone, and mixtures thereof.

Attached is a letter, from counsel (John J. Normile of Pennie & Edmonds) for the distributor of the infringing product, that was sent to the present assignee in response to an allegation of infringement of the parent '520 patent. As stated at the bottom of page one of that letter, the infringing product includes diiodomethyl-*p*-tolyl sulfone as the antimicrobial agent.

Claim 6 requires a sulfone as the antimicrobial agent, and so claim 6 is infringed.

Claim 7 recites diidomethyl *p*-tolyl sulfone as the specific antimicrobial agent, and so it is also infringed.

Claim 10:

Originally numbered claim 6, and in light of the preliminary amendment now numbered claim 10, recites:

10. A method for making a non-absorbent, antimicrobial, surface, comprising the steps of:
 - A. providing a substrate;

- B. providing a liquid, film-formable binder effective to coat the surface;
- C. admixing an antimicrobial compound with the binder to produce a binder mix; and
- D. coating the substrate with the binder mix, curing the binder, and repeating the coating and curing as desired.

According to the Declaration (§ 9) and the foregoing analysis of claim 1:

the "scouring pad material" is the substrate;
a binder is supplied;
one "combine[s] the antimicrobial agent with a binder";
one "appl[ies] the antimicrobial agent-binder compound to the [substrate]";
and
one "cure[s] the compound on the [substrate]".

Therefore, claim 10 is unquestionably infringed.

Claims 14 and 15

Originally claims 10 and 11, being substantially the same as claims 6 and 7 (original second set of claims 2 and 3), reciting the presence of a sulfone and the particular sulfone acknowledged as being present in the produce, are therefore clearly infringed.

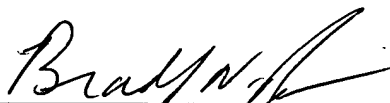
Prior Art

In accordance with the requirement under MPEP 708.02 (II)(C), an Information Disclosure Statement is submitted herewith. The instant application is a continuation-in-part of a prior application now issued as US 6,299,520. Accordingly, the Applicant, assignee, and/or the undersigned have a good knowledge of the pertinent prior art, based on (i) art cited in that prior application and (ii) a search conducted in connection with the prior application, the art which was made of record in that prior application.

Conclusion

In light of the foregoing, it clear that there is an existing product actually on the market in the United States, and it is the undersigned's opinion that at least some of the claims of the subject patent application are unquestionably infringed. Therefore, it is earnestly requested that this application be advanced for immediate examination.

Respectfully submitted,



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23 May 2003



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DECLARATION OF STEVEN N. BUCKLER

1. I am over eighteen years of age and am competent to testify as to the matters here set forth. I make this affidavit on the basis of my personal knowledge.
2. I currently am, and have been for over 20 years, the President of ACS Industries, Inc. ("ACS")
3. ACS is a Rhode Island corporation with a principal place of business at 191 Social Street, Woonsocket, Rhode Island.
4. Sysco Corporation is a customer of ACS.

5. In 2003 Sysco Corporation sent ACS a sample of a certain product identified on the package as: "MEDIUM DUTY SCOURING PAD," containing stock number "MD-69/20." This is a scouring pad product manufactured and offered for sale by the Glit/Disco, a company owned by Katy Industries, Inc.
6. The labels from the packaging of the product are attached to this Affidavit as Exhibit A.
7. One of the labels affixed to the product package recites in entirety:

TREATED WITH Ultra-Fresh*

Ultra-Fresh* is an antimicrobial treatment that protects the binding agent in these products to control odors and fungal growth within the binder. The Ultra-Fresh* treatment does not protect users or others against disease causing organisms. Always clean and wash the product thoroughly before and after each use.

Ultra-Fresh is a registered trademark of Thomson Research Associates, Inc., Toronto, Canada.

8. On or about April 7, 2003 I phoned Thomson Research Associates, Inc., and spoke to a man who identified himself as Glenn Runciman. Mr. Runciman told me that Thomson Research Associates, Inc. supplies an Ultra-Fresh antimicrobial agent to Glit/Disco for scouring pad applications.

9. Mr. Runciman further stated that the following method is the sole method for applying the antimicrobial agent to the MD-69/20 scouring pad:
 1. combine the antimicrobial agent with a binder,
 2. apply the antimicrobial agent - binder compound to the scouring pad material, and
 3. cure the compound on the scouring pad material in an oven in order to permanently adhere the compound to the pad.
10. Mr. Runciman stated that if the above procedure was not followed, the antimicrobial agent would rinse off the surface of the scouring pad material in first use.
11. Mr. Runciman concluded that Glit/Disco was using the Ultra-Fresh antimicrobial agent in the manner stated in item 9 above.
12. Based on my conversation with Glenn Runciman, I believe that Glit/Disco is infringing on the claims of the subject US patent application.
13. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or

imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Steven N. Buckler
Steven N. Buckler

5/16/03
Date